

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Aaron Cole	Team: Squad #1	CCRB Case #: 201607151	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/20/2016 9:30 AM	Location of Incident: 175th Street and Jamaica Avenue; 103rd Precinct Stationhouse	Precinct: 103	18 Mo. SOL 2/20/2018	EO SOL 2/20/2018	
Date/Time CV Reported Sat, 08/20/2016 6:49 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 08/20/2016 6:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Volpi	21639	951404	NARCBQS
2. SGT Mark Sinatra	04720	944174	NARCBQS
3. An officer			NARCBQS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Eric Moy	2788	949373	NARCBQS
2. POM Steven Acevedo	16469	949959	NARCBQS
3. DT3 Michael Russo	3360	949593	NARCBQS
4. DT3 Victor Rosario	06261	937436	NARCBQS
5. DT3 Roberto Toribio	03100	948148	NARCBQS
6. POM Derrick Coleman	22912	950219	NARCBQS
7. SGT Marlon Rowe	04241	929869	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Volpi	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, Police Officer Brian Volpi questioned § 87(2)(b)	
B.POM Brian Volpi	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, Police Officer Brian Volpi stopped § 87(2)(b)	
C.POM Brian Volpi	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, Police Officer Brian Volpi searched § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
D. An officer	Abuse: At the intersection of 175th Street and Jamaica Avenue, an officer questioned § 87(2)(b)	
E. An officer	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, an officer stopped § 87(2)(b)	
F. An officer	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, an officer searched § 87(2)(b)	
G. An officer	Abuse: At the intersection of 175th Street and Jamaica Avenue, an officer questioned § 87(2)(b)	
H. An officer	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, an officer stopped § 87(2)(b)	
I. An officer	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, an officer searched § 87(2)(b)	
J.SGT Mark Sinatra	Abuse: At the intersection of 175th Street and Jamaica Avenue in Queens, Sergeant Mark Sinatra searched § 87(2)(b)	
K.SGT Mark Sinatra	Off. Language: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
L.SGT Mark Sinatra	Off. Language: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra made comments to § 87(2)(b) of a sexual nature.	
M.SGT Mark Sinatra	Off. Language: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra made remarks to § 87(2)(b) of a sexual nature.	
N.SGT Mark Sinatra	Abuse: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra refused to provide his name and/or shield number to § 87(2)(b)	
O.POM Brian Volpi	Abuse: At the 103rd Precinct stationhouse, PO Brian Volpi refused to provide his name and/or shield number to § 87(2)(b)	
P. An officer	Abuse: At the 103rd Precinct stationhouse, an officer refused to provide his name and/or shield number to § 87(2)(b)	
Q.POM Brian Volpi	Discourtesy: At the 103rd Precinct stationhouse, Police Officer Brian Volpi spoke discourteously to § 87(2)(b)	

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the on-line website on August 20, 2016. On August 20, 2016, at approximately 9:30 A.M., in the vicinity of 175<sup>th</sup> Street and Jamaica Avenue in Queens, § 87(2)(b) was walking with her boyfriend, § 87(2)(b) and her sister, § 87(2)(b). The three had recently left a methodone clinic located at § 87(2)(b) on § 87(2)(b), where each of them had received a prescription methodone bottle that was labeled with his/her name and address. § 87(2)(b) was carrying a purse, which she used to carry both her and § 87(2)(b)'s methodone bottles, because § 87(2)(b) had no purse.

PO Brian Volpi of Narcotics Borough Queens South allegedly questioned, stopped, and searched § 87(2)(b)'s person and purse (**Allegation A, Allegation B, Allegation C**). A second officer allegedly questioned, stopped and searched § 87(2)(b) (**Allegation D, Allegation E, Allegation F**), while a third officer allegedly questioned, stopped and searched § 87(2)(b) (**Allegation G, Allegation H, Allegation I**). PO Volpi observed two bottles of methodone in § 87(2)(b)'s purse. § 87(2)(b) and § 87(2)(b) allegedly informed the officers that § 87(2)(b) was temporarily carrying § 87(2)(b)'s bottle because § 87(2)(b) did not have pockets or a purse, and § 87(2)(b) and § 87(2)(b) each provided identification that matched the prescription labels on the methodone bottles in question.

PO Volpi requested that his supervisor, Sgt. Mark Sinatra, respond to the location, and Sgt. Sinatra arrived on scene shortly thereafter in a black Toyota. It is alleged that two to three other officers were present with Sgt. Sinatra. Sgt. Sinatra allegedly searched § 87(2)(b)'s purse (**Allegation J**) and recovered both § 87(2)(b)'s bottle of methodone, as well as a metal thimble which allegedly contained heroin residue.

§ 87(2)(b) was arrested for § 87(2)(b) placed inside of a prisoner van attended by PO Michael Russo and PO Derrick Coleman of Narcotics Borough Queens South, and transported to the 103<sup>rd</sup> Precinct stationhouse. § 87(2)(b) was lodged in a holding cell within the 103<sup>rd</sup> Precinct. Present in the female holding cell with § 87(2)(b) were prisoners § 87(2)(b) and § 87(2)(b).

While inside of the holding cell, § 87(2)(b) informed an officer that she was menstruating. § 87(2)(b) heard a voice that she believed belonged to Sgt. Sinatra call out, "In those tiny shorts, maybe if we see blood running down your leg, we'll do something about it" (**Allegation K**). § 87(2)(b) witnessed § 87(2)(b) inform an officer that she was hungry, and wanted a bologna sandwich. This officer then led § 87(2)(b) to the fingerprinting room, and asked Sgt. Sinatra if § 87(2)(b) could be provided with something to eat. Sgt. Sinatra responded, § 87(2)(b) "can lick my salty balls" (**Allegation L**).

After § 87(2)(b) was fingerprinted, she asked the officer that escorted her if he could grab the Purell bottle attached to her purse to squirt some hand sanitizer in her hands. Sgt. Sinatra allegedly stated, "I'll give her something to squirt in her hands," and glanced suggestively at his crotch (**Allegation M**).

§ 87(2)(b) was released from the 103<sup>rd</sup> Precinct stationhouse and received a Desk Appearance Ticket at 12:05 PM. As § 87(2)(b) waited to receive her Desk Appearance Ticket by the front desk of the stationhouse, she asked officers for the names and shield numbers of her arresting officer and the other officers present at the scene of her arrest. Sgt. Sinatra, PO Volpi, and a third white male officer who had been present at the scene of arrest did not respond to this question, but left the desk area. When Sgt. Sinatra, PO Volpi, and the third, unnamed officer present returned to deliver the Desk Appearance Ticket (DAT) to § 87(2)(b) their

shields were turned backwards, so that their names and shield numbers were obstructed (**Allegation N, Allegation O, Allegation P**). PO Volpi handed § 87(2)(b) her Desk Appearance Ticket and allegedly stated, “Get the fuck out of here, before you get in more trouble” (**Allegation Q**.)

There is no video footage associated with this complaint.

## **Mediation, Civil and Criminal Histories**

- As of the writing of this report, no notice of claim has been submitted regarding this incident (Board Review 01).
- Mediation was deemed unsuitable for this complaint because it generated an IAB investigation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

1. [REDACTED]  
 2. [REDACTED]  
 3. [REDACTED]  
 4. [REDACTED]  
 5. [REDACTED]  
 6. [REDACTED]

[illegible]

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first complaint filed with the CCRB, and the first time that she has been involved with a CCRB complaint (Board Review 06).
- This is § 87(2)(b)'s second complaint filed with the CCRB (Board Review 06).
- This is the first CCRB complaint in which § 87(2)(b) has been involved (Board Review 05).
- As of the writing of this report, § 87(2)(b) has never filed a complaint with the CCRB, and the first CCRB complaint in which she was involved (Board Review 06).
- PO Brian Volpi has been the subject in five CCRB cases and 16 FADO allegations during his 5 year tenure with the NYPD. None of these allegations have been substantiated. Past allegations against PO Volpi have included abuse of authority for a vehicle stop, a vehicle search, and premises entered and/or searched (Board Review 07).

- Sgt. Mark Sinatra has been the subject in 16 CCRB cases and 42 FADO allegations during his 10 year tenure at the CCRB (Board Review 07).  
Allegations were substantiated against Sgt. Sinatra for Vehicle Search and Refusal to Provide Name/Shield related to a CCRB case #201506484. Sgt. Sinatra did not receive any penalty from the NYPD for these substantiated allegations. Allegations were substantiated against Sgt. Sinatra for Physical force, Vehicle Search, Property Damage, Refusal to Provide Name/Shield Number, and Search (of Person) related to CCRB case #201506493, and charges were recommended. As of the writing of this report, the NYPD has yet to reach a disposition as to the penalty for the charges (Board Review 07). Allegations were substantiated against Sgt. Sinatra for Physical Force related to CCRB case #201601667, and the NYPD has yet to reach a disposition as to the penalty for the charges. Sgt. Sinatra was cited for “other misconduct” for issuing a false official statement pertaining to a CCRB case #201601667. The NYPD has yet to reach a disposition as to the penalty for the charges (Board Review 07).

### Potential Issues

- The investigation was unable to obtain a statement from § 87(2)(b) Both § 87(2)(b) and § 87(2)(b) alleged that § 87(2)(b) was stopped, questioned, and searched by an unidentified officer. Both civilians also affirmed that § 87(2)(b) lived at the same address as § 87(2)(b) and provided a home phone number for that residence. In addition to this home phone number, an alternative phone number for § 87(2)(b) was obtained via Lexis Nexis and Clear searches. Contact attempts were exhausted to both of these phone numbers (and address). § 87(2)(b) stated that § 87(2)(b) did not have an email address, and no email address was obtained from Lexis Nexis or Clear searches. On December 5, 2016, § 87(2)(b) stated that § 87(2)(b) had a new cell phone number. The required contact attempts were made to this number and upon each attempt, the number was out of service. To date, § 87(2)(b) has not made contact with the CCRB.
- The investigation was unable to obtain a statement from § 87(2)(b) § 87(2)(b)'s arrest report provided a current address, as well as a NYSID number, which was used to find a second address, but no phone number or email address. Lexis Nexis and Clear searches produced the same results as obtained from the arrest report, with no phone number or email address. A search of § 87(2)(b)'s CCRB history produced negative results. The required contact attempts were made and exhausted to § 87(2)(b)'s known mailing addresses, and as of the writing of this report, § 87(2)(b) has been unresponsive.
- The investigation was unable to obtain video footage. Four businesses and one church in the immediate vicinity of the incident were contacted regarding possible video footage; all of these establishments stated that video footage was unavailable.
- § 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

## Findings and Recommendations

### Pleading

- It is undisputed that PO Volpi questioned, stopped, and searched § 87(2)(b) (Allegation A, Allegation B, Allegation C). However, both § 87(2)(b) (Board Review 08) and § 87(2)(b) (Board Review 09) alleged that officers also questioned, stopped and searched § 87(2)(b) (Allegation D, Allegation E, Allegation F) and § 87(2)(b) (Allegation G, Allegation H, Allegation I), § 87(2)(g) § 87(2)(b) and § 87(2)(b) each stated that a different officer searched each of the three civilians, that one of the officers present was a white male with brown hair, fitting the description of PO Volpi, and that one was an Asian male that fit the description of Det. Moy. Each testified that Det. Moy was not the officer that searched him/her personally. § 87(2)(g) § 87(2)(b) testified that four officers were present, while § 87(2)(b) testified that three officers were present. However, all officers testified that only two officers were present for the initial stop, and PO Volpi (Board Review 10) and Det. Moy (Board Review 11) confirmed that they were present when the stop was initiated. The tactical plan from August 20, 2016 (Board Review 12) documented that PO Volpi, Det. Moy, Sgt. Sinatra, and Det. Rosario were assigned to the Leader Car. Sgt. Sinatra (Board Review 13) and Det. Rosario's memo books (Board Review 14) both indicated that they left the Leader Car at 9:10 AM in order to attend to an arrest at 179<sup>th</sup> Street and Hillside Avenue. This was consistent with the testimony of PO Volpi, Det. Moy, Sgt. Sinatra (Board Review 15), and Det. Rosario (Board Review 16), all of whom stated that Sgt. Sinatra and Det. Rosario left the Leader Car in the minutes before § 87(2)(b) was stopped, and only arrived on scene after PO Volpi had already searched § 87(2)(b) § 87(2)(g) § 87(2)(b) stated that she asked an unspecified officer near the front desk of the stationhouse for the names and shield numbers of the officers who had been present for her arrest. Sgt. Sinatra and two white male officers who were present for her arrest were within earshot when she made this request. Sgt. Sinatra and these two officers then left the desk area, and returned. § 87(2)(b) was issued her DAT by one of the white male officers that were present at the scene of the arrest, but did not recall if this officer had arrived in the first or second vehicle. When § 87(2)(b) received her DAT, the officers whom she had asked for their names and shield numbers returned with their shields turned backwards. § 87(2)(g)

- § 87(2)(b) testified that she was handed a DAT by a white male officer who was present at the scene of her arrest, who stated, “Get the fuck out of here, before you get in more trouble” (**Allegation Q.**) As previously noted, PO Volpi testified that he handed § 87(2)(b) her DAT. § 87(2)(g)

**Allegation A- Abuse of Authority: At the intersection of 175th Street and Jamaica Avenue in Queens, Police Officer Brian Volpi questioned § 87(2)(b)**

**Allegation B- Abuse of Authority: At the intersection of 175th Street and Jamaica Avenue in Queens, Police Officer Brian Volpi stopped § 87(2)(b)**

**Allegation C- Abuse of Authority: At the intersection of 175<sup>th</sup> Street and Jamaica Avenue in Queens, Police Officer Brian Volpi searched § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) testified that upon visiting the methodone clinic at § 87(2)(b), both she and § 87(2)(b) were issued a bottle of methodone. Prior to leaving the clinic, § 87(2)(b) placed both bottles of methodone inside of her purse. § 87(2)(b) stated that she placed § 87(2)(b)'s bottle of methodone inside of her purse because § 87(2)(b) was not carrying a purse, and § 87(2)(b) did not want § 87(2)(b) to have to carry her methodone bottle in her hand, or protruding from one of her pockets. § 87(2)(b) testified that she did not remove either methodone bottle from inside of her purse between leaving the methodone clinic and being stopped by officers.

§ 87(2)(b) and § 87(2)(b) walked down Jamaica Avenue, intending to visit a check cashing business located on Jamaica Avenue and 170<sup>th</sup> Street. The group did not interact with anyone between leaving the methodone clinic and being stopped by officers, nor did they exchange any money for objects with any individuals.

When the group reached 175<sup>th</sup> Street and Jamaica Avenue, an unmarked van with no windows pulled up in front of a parked car § 87(2)(b) could not specify the color of the van.) Four officers exited the vehicle, and displayed their badges while approaching § 87(2)(b) and § 87(2)(b) and asked “where are you guys going?” The officers then asked if the three civilians had anything sharp in their pockets that could prick the officers, and told them that if they did, the officers “would get mad” § 87(2)(b) did not specify which of the officers made these comments.) The officers then asked the group where they had come from, and then proceeded to search them. § 87(2)(b) did not testify as to whether anyone informed the officers that her party was coming from the methodone clinic.) § 87(2)(b) was searched by a white male officer with brown hair. This officer searched § 87(2)(b)'s pockets, which were empty, as well as her purse, from which he recovered two bottles of methodone. One of these methodone bottles was labeled with § 87(2)(b)'s name, and the other was labeled with § 87(2)(b)'s name.

§ 87(2)(b) did not think to ask why she was stopped and searched, because she was “in shock” at the time. At no time did the officers inform the civilians why they were being questioned, or ask for permission or consent to search the three civilians; rather, the officers immediately began to question the civilians as to the contents of their pockets, what their destination was, and where they came from, then proceeded to search them.

§ 87(2)(b) testified that he left the methodone clinic on § 87(2)(b) at approximately 8:30 AM, along with his girlfriend, § 87(2)(b) and her sister, § 87(2)(b). § 87(2)(b) placed both bottles of methodone inside of her purse while exiting the clinic and did not remove the methodone bottles from her purse prior to being searched by police. As the three individuals walked downtown on Jamaica Avenue, a black van parked approximately ten feet in front of them and three officers in plainclothes exited, reached underneath their shirt collars, and pulled out badges strung from chains around their necks. The officers told § 87(2)(b) and § 87(2)(b) to get against the wall. § 87(2)(b) and § 87(2)(b) complied without any verbal or physical resistance. The officers then proceeded to search all three civilians.

The officers did not ask any of the individuals for consent to search them. § 87(2)(b) testified that he was searched by a white male with dark brown hair, and that § 87(2)(b) and § 87(2)(b) were searched by a Hispanic officer and a white officer, but was not sure which officer searched which woman. An officer placed his hands inside of § 87(2)(b)'s pockets, then searched through her purse, and recovered a bottle of methodone that belonged to § 87(2)(b). The officer asked the group who § 87(2)(b)'s bottle of methodone belonged to, and § 87(2)(b) informed the officer that it belonged to her, that she lived with her sister § 87(2)(b) and that § 87(2)(b) carried the bottle because § 87(2)(b) did not have a purse on her.

PO Volpi testified that prior to the incident, he was in the Leader Car with Det. Moy. PO Volpi was the recorder, and PO Moy was the operator. Det. Rosario and Sgt. Sinatra were not present in the Leader Car, because they left to verify an earlier arrest. From inside of his vehicle, PO Volpi observed § 87(2)(b) and § 87(2)(b) walking side by side. PO Volpi did not recall a male being present with the two women. PO Volpi's attention was drawn to § 87(2)(b) because there were few pedestrians on the street at that time, and as a narcotics officer, he generally paid close attention to people. PO Volpi noticed that § 87(2)(b) held in her hand what appeared to be a prescription methodone bottle.

PO Volpi was familiar with the appearance of a prescription methodone bottle from the two months that he had served as a member of Narcotics Borough Queens South, during which he had made approximately 100 stops related to methodone. This experience informed him that patients of methodone clinics usually consumed the medication while inside of the clinic. He was also aware that it was not unusual for methodone patients to unlawfully sell the medication that was prescribed to them.

PO Volpi was aware that a methodone clinic existed nearby on § 87(2)(b), but did not see § 87(2)(b) exit the methodone clinic, or know at the time whether she had visited it. During his CCRB interview, PO Volpi acknowledged that it is legal for an individual to carry a methodone bottle in plain sight. However, the fact that § 87(2)(b) was holding a methodone



bottle in plain sight outside of a clinic aroused his suspicion that she may be in possession of contraband, and he asked Det. Moy to park the car, intending to approach her, because of this suspicion.

PO Volpi did not recall where PO Moy parked in relation to § 87(2)(b). Immediately before PO Volpi exited his vehicle, he observed § 87(2)(b) place her methodone bottle inside of her purse. PO Volpi did not testify whether he made eye contact with § 87(2)(b). PO Volpi walked to § 87(2)(b) and “casually” asked to speak with her. § 87(2)(b)’s reaction to his question was “indifferent”, and she did not appear rattled or upset by the encounter. PO Volpi asked § 87(2)(b) what she put into her bag, and she responded that it was her methodone.

PO Volpi did not recall if any officer spoke with § 87(2)(b)’s companion. Det. Moy was next to PO Volpi, but PO Volpi did not know if Det. Moy interacted with anyone.

PO Volpi asked § 87(2)(b) to see her bag, and she handed it to him. He did not ask § 87(2)(b) for permission to search inside of her bag, rather, he stated that he felt he was allowed to investigate in order to verify that the methodone possessed by § 87(2)(b) actually belonged to her. PO Volpi asked § 87(2)(b) if there was anything sharp inside of her bag as he began to search through it. PO Volpi recovered two bottles of methodone inside of § 87(2)(b)’s bag. He looked at the methadone bottles and discovered that only one of those two methadone bottles belonged to § 87(2)(b). He did not remember whose name was on the other bottle. PO Volpi asked § 87(2)(b) why she possessed two methadone bottles, but neither she nor her companion replied or offered an explanation. At about the same time PO Volpi found the methadone bottles, he also discovered a silver cap with a film of brown residue inside of it within the bag. Based upon his experience, PO Volpi believed that the brown residue was heroin, which the silver cap had been used to heat and liquefy. PO Volpi asked § 87(2)(b) what the silver cap was, and § 87(2)(b) did not respond. § 87(2)(b) remained quiet throughout the entire interaction.

Det. Moy corroborated PO Volpi’s account that when the encounter began, he and PO Volpi were alone in the leader car. Sgt. Sinatra and Det. Rosario had exited the leader car prior to the encounter in order to verify a separate arrest. From inside of the vehicle, PO Volpi announced that he observed two females walking next to one another, and that one of them held in her hand a prescription bottle of methodone. Det. Moy did not observe the methodone bottle himself, did not see any male present with the two females, and did not recognize a picture of § 87(2)(b) during his CCRB interview.

Det. Moy was aware that a methodone clinic existed in the vicinity of § 87(2)(b), but did not see § 87(2)(b) and § 87(2)(b) leave this clinic, and did not suspect that they had left the clinic.

PO Volpi and Det. Moy parked their vehicle immediately adjacent to § 87(2)(b) and § 87(2)(b). PO Volpi and Det. Moy exited the vehicle and began to approach § 87(2)(b) at which point she noticed them approaching and placed the methodone bottle inside of her purse.

PO Volpi asked § 87(2)(b) to present the bottle to him, which she did. PO Volpi did not make any other comment, or ask any other questions of § 87(2)(b) at this time, and § 87(2)(b) did not respond verbally to PO Volpi. Neither PO Volpi nor Det. Moy asked the women where they were going, or if they had anything sharp in their pockets that the officers could potentially be pricked by. Det. Moy did not say anything to § 87(2)(b) or § 87(2)(b) at this time.

Either PO Volpi or Det. Moy asked § 87(2)(b) for her identification, which she provided. Upon assessing her identification, and the methodone bottle, PO Volpi found that the name on the prescription label of the bottle did not match the name on § 87(2)(b)'s identification. PO Volpi placed § 87(2)(b) under arrest for § 87(2)(b).

The property voucher from § 87(2)(b)'s arrest on the date of the incident corroborates that paraphernalia with heroin residue and a bottle of liquid methodone prescribed to § 87(2)(b) was vouchered.

In *People v. Debour*, 40 N.Y.2d 210, 386 N.Y.S.2d 375, 352 N.E.2d 562 (1976) (Board Review 17) the Court identified four levels of police intrusions and the degree of knowledge needed to justify each level. The lowest of these levels of intrusion is the right of an officer to approach a citizen and request information, when there is some objective credible reason for that interference, although not necessarily indicative of criminality. The second level of intrusion, often referred to as “the common law right of inquiry” is marked by extended and accusatory questions by which the officer’s inquiry focuses on the possible criminality of the person approached. This level of intrusion must be justified by a “founded suspicion that criminality is afoot.” The *People v. Holman*, 79 N.Y.2d 181, 182, 581 N.Y.S.2d 619, 590 N.E.2d 204 (1992) (Board Review 18) further clarified the difference between these two levels of intrusion, arguing that a request for information involves basic, nonthreatening questions that would not lead a person to believe that he or she is the focus of an investigation, whereas a common-law inquiry involves intimidating, invasive, and accusatory questions that focus on a particular person as the target of an investigation. § 87(2)(g)

In drug cases, certain activity observed by the police may provide justification for an officer’s right to conduct a common-law inquiry. An officer can make an inquiry when he observes the following: an exchange of currency for an unidentified object (*People v. Douglas*, 309 A.D.2d 517, 764 N.Y.S.2d 702) (2003) (Board Review 19), an exchange between individuals in an area described as a “drug supermarket” (*People v. Welch*, 289 A.D. 2d 936, 734 N.Y.S.2d 702) (2003) (Board review 20), an exchange of “small objects” with another person (*People v. Sylvain*, 33 A.D. 3d 330, 821 N.Y.S.2d 588( (2006) (Board Review 21), or hand-to-hand contact with another individual who immediately placed his hand in his pocket (*People v. Socia*, 96 A.D.3d 1081, 946 N.Y.S. 2d 653 (2012) (Board Review 22).

Courts have routinely found that the police may not approach an individual merely because there have been community complaints of drug or gang activity, or because the individual is in a high crime area (*People v. Larmond*, 106 A.D. 3d 934 N.Y.S.2d 661) (2013) (Board Review 23).

*People v. Debour* further establishes that innocuous behavior alone will not generate a founded suspicion that a crime is at hand. In the case of the *People v. Debour*, the innocuous behavior being referenced was an individual crossing the street in a high crime area, after having made eye contact with officers that were approaching him.

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

The *People v. Debour* classified the third level of police intrusion as an officer's right to forcibly stop an individual. This is permissible if an officer has reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. Reasonable suspicion requires a greater indication of criminality than does founded suspicion. Under this level of

intrusion, the officer is entitled to interfere with a citizen “to the extent necessary to gain explanatory information, but short of a forcible seizure.” However, as established by *Florida v. Bostick*, 501 US, at , *supra*, 111 S Ct, at 2386 (quoting *California v. Hodari D.*, 499 US, at *supra*, 111 S Ct, at 2386) (Board Review 24), the test of whether a stop has occurred is whether “a reasonable person would feel free ‘to disregard the police and go about his business.’”

§ 87(2)(b) and § 87(2)(b) alleged that officers searched them, without consent, immediately after approaching and displaying their shields. § 87(2)(g) § 87(2)(b) reported that officers asked preliminary questions about where the parties were going, and if they had any sharp objects on them, while § 87(2)(b) reported that the officers ordered the parties to get against the wall,) both complainants testified that the stop and search happened in immediate succession. PO Volpi corroborated that immediately after asking to speak with § 87(2)(b) he asked to “see” her bag, then began to search it. § 87(2)(b) testified that she did not question or protest PO Volpi’s inquiries because she was “in shock.” PO Volpi stated that he did not ask for permission to search her bag and did not believe that he needed it and approached § 87(2)(b) specifically to investigate whether she was in lawful possession of the methodone bottle that she allegedly held in her hand. § 87(2)(g)

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§ 87(2)(g)

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Pursuant to common law inquiry, an officer can ask an individual about the contents or ownership of a bag and can ask for permission or consent to search the bag. However, as established by *People v. Hollman*, consent based upon an improper inquiry is considered *involuntary*. § 87(2)(g) § 87(2)(b) *People v. Hollman* entailed an officer suspecting a defendant of possessing narcotics in a bag, because after making eye contact with the officer, the defendant seemed to hesitate in walking towards the officer any further. The officer then requested to search the defendant’s bag, despite the fact that there was nothing suspicious about the bag itself. Although the defendant complied with the officers’ request, the court concluded that “Because the defendant’s consent to the search was a product of the improper police inquiry, it was an error to find that defendant had in fact consented to the search of his bag.” Criminal Procedure Law 140.50 (Board Review 25) specifies that during a street encounter, an officer may search an individual only if the officer reasonably suspects that he/she is in danger of physical injury, and the search must be conducted specifically for weapons, not narcotics.

§ 87(2)(g)

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**Allegation D- Abuse of Authority: At the intersection of 175<sup>th</sup> Street and Jamaica Avenue, an officer questioned § 87(2)(b)**

**Allegation E- Abuse of Authority: At the intersection of 175<sup>th</sup> Street and Jamaica Avenue, an officer stopped § 87(2)(b)**

**Allegation F- Abuse of Authority: At the intersection of 175<sup>th</sup> Street and Jamaica Avenue, an officer searched § 87(2)(b)**

**Allegation G- Abuse of Authority: At the intersection of 175<sup>th</sup> Street and Jamaica Avenue, an officer questioned § 87(2)(b)**

**Allegation H- Abuse of Authority: At the intersection of 175<sup>th</sup> Street and Jamaica Avenue, an officer stopped § 87(2)(b)**

**Allegation I- Abuse of Authority: At the intersection of 175<sup>th</sup> Street and Jamaica Avenue, an officer searched § 87(2)(b)**

PO Volpi and Det. Moy disputed that § 87(2)(b) was present for the incident, and that an officer questioned, stopped, and searched § 87(2)(b). PO Volpi and Det. Moy also disputed that any officer questioned, stopped, and searched § 87(2)(b) contrary to the report of § 87(2)(b) and § 87(2)(b). § 87(2)(g)

**Allegation J –Abuse of Authority: At the intersection of 175th Street and Jamaica Avenue in Queens, Sergeant Mark Sinatra searched § 87(2)(b)**

§ 87(2)(b) allegedly explained to the officer that searched through her purse that the bottle labeled § 87(2)(b) belonged to her sister, and that § 87(2)(b)'s bottle was in her purse only because § 87(2)(b) did not have a purse or pockets on her at the time. § 87(2)(b) then allegedly identified herself and corroborated § 87(2)(b)'s explanation. Both § 87(2)(b) and § 87(2)(b) were in possession of identification that stated their names and the address that they shared. § 87(2)(b) further explained that § 87(2)(b) lived with her, as could be verified by the fact that both methodone bottles were labeled with the same address. The officers seemed to accept this explanation, and indicated that they were prepared to let the three civilians be on their way, because they did not do anything illegal.

Ten minutes after the initial stop, Sgt. Sinatra arrived on scene and searched the contents of § 87(2)(b)'s purse. Sgt. Sinatra discovered a game-piece from the board game “Monopoly” that is made of metal and shaped like a thimble, and accused § 87(2)(b) of using it to prepare heroin for injection. Sgt. Sinatra then told § 87(2)(b) that she was under arrest and placed her in handcuffs. § 87(2)(b) corroborated that Sgt. Sinatra found the monopoly game-piece and handcuffed § 87(2)(b). Both § 87(2)(b) and § 87(2)(b) testified that the

officers seemed prepared to let § 87(2)(b) go without arresting her prior to Sgt. Sinatra's arrival.

PO Volpi testified that at about the same time that he found the methadone bottles, he also discovered a silver cap with a film of brown residue inside of it within the bag. According to PO Volpi, this is a common result of individuals heating and liquefying heroin in caps in order to inject it. As such, PO Volpi believed the visible residue to be heroin. PO Volpi placed § 87(2)(b) under arrest, then called Sgt. Sinatra to the scene to verify the arrest, after which, the evidence recovered in § 87(2)(b)'s bag was presented to Sgt. Sinatra.

PO Volpi's account was corroborated by Det. Moy, and Det. Rosario (Board Review 26), who arrived with Sgt. Sinatra. Sgt. Sinatra testified that he did not search § 87(2)(b)'s purse, Det. Moy testified that he did not recall if Sgt. Sinatra searched § 87(2)(b)'s purse, and Det. Rosario did not report whether Sgt. Sinatra searched § 87(2)(b)'s purse or not. Both PO Russo (Board Review 27) and PO Coleman (Board Review 28) testified that they arrived on scene in the prisoner van after § 87(2)(b) was already under arrest, and did not independently recall the details of the arrest or know what transpired before they arrived.

Sgt. Sinatra testified that at approximately 9:30 A.M. on the date in question, he received a call from PO Volpi requesting that he respond to 175<sup>th</sup> Street and Jamaica Avenue to verify an arrest that PO Volpi had made. Upon Sgt. Sinatra's arrival, § 87(2)(b) had already been placed under arrest by PO Volpi. PO Volpi informed Sgt. Sinatra that § 87(2)(b) was in possession of a quantity of methodone that was not prescribed to her, as well as a quantity of heroin. Sgt. Sinatra did not recall any other specific information that PO Volpi provided regarding the arrest. Sgt. Sinatra did not recall which other officers, besides PO Volpi, were present at the scene of the arrest. There was a female civilian present with § 87(2)(b) but he did not recall her name, what her relationship was to § 87(2)(b) or if she was § 87(2)(b)'s sister. Sgt. Sinatra did not recall if there were any other civilians accompanying § 87(2)(b) in addition to the other female. Sgt. Sinatra did not personally frisk or search § 87(2)(b) and was never in possession of § 87(2)(b)'s bag or purse. No further contraband was discovered on § 87(2)(b)'s person after Sgt. Sinatra arrived at the scene of the arrest. Sgt. Sinatra did not recall if he had any conversation with § 87(2)(b) or if he engaged with § 87(2)(b)'s female companion. § 87(2)(b) did not protest her arrest or provide a reason why she had two bottles of methodone on her person.

[illegible]

**Allegation K-Offensive Language: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

§ 87(2)(b) reported that while inside of the holding cell within the 103<sup>rd</sup> Precinct stationhouse, she began to menstruate, and informed an unidentified officer (whom she did not describe) of this concern, with the hope that she might obtain a sanitary napkin. § 87(2)(b) overheard a voice call from several feet down the hallway outside of the holding cell, “In those tiny shorts, maybe if we see some blood running down your leg we’ll do something about it.” § 87(2)(b) was unable to see who made this comment, but recognized the voice as belonging to Sgt. Sinatra.

§ 87(2)(b) was not present when this comment was made.

§ 87(2)(b) who was lodged inside of a holding cell within the 103<sup>rd</sup> Precinct, volunteered at the beginning of his statement that he specifically did not hear any officers make “obscene” comments, or demonstrate “obscene behavior” (Board Review 30) He further testified that he did not hear any prisoner request sanitary napkins for menstruation, and he did not hear any officer make the comment described above. § 87(2)(g)

§ 87(2)(b) an elderly female who attends the same methodone clinic as him was present and asked for a sandwich. § 87(2)(b) concluded his testimony by stating that when he was released from the 103<sup>rd</sup> Precinct stationhouse on the date of the incident,

§ 87(2)(e), § 87(2)(f), § 87(2)(b)

§ 87(2)(b) who was also lodged in the holding cells, testified (Board Review 31) that he recalled a Caucasian female prisoner complaining to officers inside of the stationhouse that she had been arrested for carrying her sister’s methodone bottle, despite the fact that her sister was present with her at the time of the arrest. However, § 87(2)(b) did not hear any female prisoner make any request related to hygiene for menstruation, and did not hear any officer make the alleged comment.

Sgt. Sinatra testified that while he did not specifically recall where he was inside of the 103<sup>rd</sup> Precinct on the date in question, he was most likely in the Muster Room, near the finger printing machine, or possibly at the front desk of the precinct. Sgt. Sinatra did not recall any female prisoner making a comment about her menstrual cycle. He did not recall § 87(2)(b) mentioning to him or any officer that she was having her period. He did not make any comment to § 87(2)(b) regarding her menstrual cycle. He did not specifically say to § 87(2)(b) “In those tiny shorts, maybe if we see some blood running down your leg, we’ll do something about it.” No officer made any comment regarding a prisoner’s menstrual cycle.

PO Volpi, Det. Moy, Det. Rosario, Sgt. Sinatra, PO Coleman, PO Russo, and Sgt. Rowe were consistent in their accounts that no female prisoner made a comment regarding menstruation, or that they did not recall a female prisoner doing so, and that neither Sgt. Sinatra nor any other officer made the alleged comment in question. All officers were similarly consistent in that they

did not recall Sgt. Sinatra's positioning within the stationhouse throughout the entirety of the day, but that he was most likely present in the Muster Room for much of his tour, which was adjacent to the prisoner holding cells. From a position inside the Muster Room, it would have been impossible to see inside of the holding cells, but possible to hear what a prisoner said.

§ 87(2)(g)

**Allegation L-Offensive Language: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra made comments to § 87(2)(b) of a sexual nature.**

§ 87(2)(b) heard § 87(2)(b) inform an officer that she was hungry, and request a sandwich. When § 87(2)(b) was brought into the fingerprinting room, she witnessed this same officer relay § 87(2)(b)'s request to Sgt. Sinatra, whereupon Sgt. Sinatra responded § 87(2)(b) "can lick my salty balls."

§ 87(2)(b) corroborated that § 87(2)(b) informed an officer that she was hungry, and requested a sandwich, but denied that an officer made the comment alleged. § 87(2)(b) was familiar with § 87(2)(b) because they attended the same methodone program, and was with § 87(2)(b) when she was arrested on the date in question, but did not see, or interact with her inside of the 103<sup>rd</sup> Precinct stationhouse, and did not hear any officer make the alleged comment.

All officers interviewed denied any knowledge or recollection of § 87(2)(b) making a request related to hunger, or Sgt. Sinatra making the alleged comment, or any reference to his genitalia at any time throughout the incident. Sgt. Sinatra recognized § 87(2)(b)'s arrest photograph, and that she was one of the arrestees on the day in question, but denied that § 87(2)(b) mentioned being hungry at any time, that he made the alleged comment, that he used the word "balls," or that he made any reference to his genitals throughout the date in question. § 87(2)(g)

**Allegation M- Offensive Language: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra made comments to § 87(2)(b) of a sexual nature.**

§ 87(2)(b) alleged that immediately after being fingerprinted, while still in the same room as Sgt. Sinatra, she asked an unidentified officer if he could squirt some hand sanitizer into her hands, at which point, Sgt. Sinatra stated, "I'll give her something to squirt in her hands," and



glanced suggestively at his genital region. § 87(2)(b) testified that two white male officers present at the scene of her arrest were also present for this comment, but that more broadly she believed that all of the officers present for her arrest would have been within ear-shot of this comment.

§ 87(2)(b) was not present inside of the stationhouse for this comment, and § 87(2)(b) and § 87(2)(b) both stated that they were not aware of any conversation regarding hand sanitizer or Sgt. Sinatra's alleged comment.

Sgt. Sinatra stated that he was present near either the fingerprinting machine in the Muster Room or at the stationhouse desk throughout the day, but denied that any prisoner made a request for hand sanitizer, or that he made the alleged comment. Sgt. Sinatra denied that he made any sexually suggestive comment to § 87(2)(b) and that any officer made any sexually suggestive comment to § 87(2)(b) or any other prisoner throughout the date in question.

The officers that fit § 87(2)(b)'s description of white males present at the scene of her arrest (besides Sgt. Sinatra) included PO Volpi, PO Russo and PO Coleman. All of these officers testified that it was possible that at some point during the date in question, they were present in the Muster Room where § 87(2)(b) would have been fingerprinted, but that they either did not recall or denied that Sgt. Sinatra made the alleged comment, as did the non-white officers (Det. Rosario, Sgt. Rowe) who were interviewed. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation N- Abuse of Authority: At the 103rd Precinct stationhouse, Sergeant Mark Sinatra refused to provide his name and/or shield number to § 87(2)(b)**

**Allegation O- Abuse of Authority: At the 103rd Precinct stationhouse, Police Officer Brian Volpi refused to provide his name and/or shield number to § 87(2)(b)**

**Allegation P- Abuse of Authority: At the 103rd Precinct stationhouse, an officer refused to provide his name and/or shield number to § 87(2)(b)**

§ 87(2)(b) stated that as she waited near the front desk of the 103<sup>rd</sup> Precinct stationhouse, she asked an officer for the names and shield numbers of the officers present at the scene of her arrest. § 87(2)(b) did not specify which officer she asked this question of, only that Sgt. Sinatra, PO Volpi, and a third white male officer were present when she asked this question with their shields exposed. However, after § 87(2)(b) asked this question, the three aforementioned officers left the area of the stationhouse desk, then returned shortly thereafter with their shields turned towards their chests, so that their names and badge numbers were not visible.

PO Volpi affirmed that he was the officer who presented § 87(2)(b) with her DAT, but that he did so as she left the cell area, rather than nearby the stationhouse front desk. He further testified that § 87(2)(b) did not ask him or any other officer for their name and/or shield number, that neither he nor any other officer obstructed their shield in any way, and that neither he nor any other officer refused to provide a name and/or shield number to § 87(2)(b)

Sgt. Sinatra testified that he did not recall where he was inside of the stationhouse when § 87(2)(b) was released. General procedure entails that Sgt. Sinatra does not personally present prisoners with DATs, but rather delegates this responsibility to a member of the team that he supervises. Any member of his team present on that day could have given § 87(2)(b) her DAT, and Sgt. Sinatra did not recall which member did. § 87(2)(b) did not ask any officer to provide his name and shield number to her. § 87(2)(b) did not ask Sgt. Sinatra to provide his name and shield number to her. No officer refused to provide § 87(2)(b) with his name and shield number. Sgt. Sinatra did not refuse to provide § 87(2)(b) with his name and shield number.

PO Russo testified that he was not present when § 87(2)(b) was handed her DAT, and that no officer, including himself, either refused to show or obstructed their name or shield number from § 87(2)(b). PO Coleman conceded that he did not recall where he was when § 87(2)(b) received her DAT, or even if he was the officer who presented it to her, but stated that he did not either refuse to provide or obstruct his name and shield number from § 87(2)(b) and that he was not aware of any officer who had done so.

Sgt. Marlon Rowe, the desk sergeant, did not recall § 87(2)(b)'s name or face, or any particulars of the date and incident in question (Board Review 32). Sgt. Rowe had only been assigned to the 103<sup>rd</sup> Precinct roughly two weeks before the incident in question, and was unfamiliar with the narcotics officers, although he recognized Sgt. Sinatra's face. Sgt. Rowe did not recall witnessing any prisoner receive a DAT in front of him on the date in question, did not recall a prisoner asking for the names and/or shield numbers of any officers, and did not recall any officer refusing to tell a prisoner his name and/or shield number.

§ 87(2)(g)

As described previously in pleading, § 87(2)(b) specified that Sgt. Sinatra, along with two white males from the scene of her arrest (one of whom was confirmed to be PO Volpi) did not respond to her request for their name and shield numbers, and obstructed their names and shield numbers by flipping their shields backwards. PO Russo and PO Coleman were the two remaining officers who fit the pedigree of male white officers from the narcotics team. PO Russo denied being present when § 87(2)(b) received her DAT, and PO Coleman did not recall whether he was present. § 87(2)(g)

**Allegation Q- Discourtesy: At the 103rd Precinct stationhouse, Police Officer Brian Volpi spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that a white male officer present at the scene of her arrest handed her a DAT and said, "Get the fuck out of here, before you get into more trouble. PO Volpi testified that while he handed § 87(2)(b) her DAT, he did not tell her "Get the fuck out of here, before you get into more trouble." Neither § 87(2)(b) nor § 87(2)(b) stated that they heard an officer make the alleged comment to a female prisoner. Sgt. Rowe, Sgt. Sinatra, PO Russo and PO Coleman all either did not recall or denied that they or any other officer made the alleged statement to § 87(2)(b) as did Det. Rosario, and Det. Moy. § 87(2)(g)

Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date